

Date of decision: 03.11.2009

+ CS(OS) 489/2007

MRS. JASLEEN CHANANA Plaintiff
 Through : Mr. Sudeep Kumar Shrotriya, Mr. Indrajit Das and Mr.
 Gaurav Khanna, Advocates.

Versus

MR. KARTAR SINGH KUMAR Defendant
 Through : Nemo.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

S.RAVINDRA BHAT, J. (OPEN COURT)

CS (OS) 489/2007

1. This is a suit for recovery seeks a money decree for Rs. 21,56,000/- along with *pendente lite* and future interest @ 18% per annum.
2. The plaintiff claims that she became acquainted with the defendant, a property broker, as they are members of the same sect, i.e. Radha Swami Satsang, Ferozepore (Punjab). The defendant approached her, requesting a loan of Rs. 14,00,000 on the pretext of financial difficulties and assured her that he would repay the entire loan amount at the earliest with interest and in any case within one year. Relying upon the statements of the defendant, says the plaintiff, she extended to him that amount way of cheques drawn on various dates (i.e. on 28.01.2004 for

Rs. 4,00,000/-, on 29.01.2004 for Rs. 3,00,000/- and on 26.02.2004 for Rs. 7,00,000/-) from her NRE SB A/c No. 213/289 maintained with the Bank of India, N.R.I. Branch, P.T.I. Building, 4 Sansad Marg, New Delhi. The plaintiff states that the amounts were duly withdrawn and appropriated by the defendant.

3. The plaintiff contends that the defendant later defaulted repayment of the amounts and sought some time, citing the pretext of heavy business losses. It is stated that even later the defendant kept on delaying the matter citing some excuse or other, which led the plaintiff to believe that he had no intention to honour the commitment, and repay the amounts due to her. The plaintiff issued a legal notice, dated 22.06.2005 through her lawyers calling upon the defendant to repay the loan amount alongwith interest at the rate of 24% per annum. The defendant did not accede to the requests of the plaintiff, compelling her to initiate these legal proceedings against him.

4. The plaintiff further points out to a later instance when she contacted the defendant to facilitate purchase of a plot in Narela Residential Scheme. The plaintiff alleges that once she purchased that plot the defendant in order to compel her to sell it at throw away prices, sent goons (anti-social and undesirable elements) to her residence who extended threats to her, against which she claims to have lodged appropriate complaints with the local police and later a civil suit (CS (OS) No. 11/2006), which is pending adjudication before the Civil Judge, seeking the relief of permanent injunction; and an interim injunction has been issued against the defendants therein.

5. The defendant was proceeded *ex-parte* on 16.05.2008 and the plaintiff was directed to lead her *ex-parte* evidence. The plaintiff filed her *ex-parte* affidavit in evidence (Ex. PW-1/A)

reiterating the plaint averments and examined herself stating that reliance is placed on Ex. PW-1/1 to Ex. PW-1/6.

6. The Court has considered the submissions and the evidence placed on record. Ex. PW-1/1 is the copy of statement of account of the Bank of India account of the plaintiff it shows that cheques for the amounts were drawn by the plaintiff on the dates urged, in favour of the defendant. Besides, it also shows cheques drawn by the plaintiff (Rs. 3,50,000/- on 24.01.2004 and Rs. 3,00,000/- on 28.01.2004 in favour of Mala Kumar and Rs. 2,00,000/- on 04.03.2004 in favour of Gurcharan Singh) in favour some persons who are allegedly the relatives of the defendant. Ex. PW-1/3 is the legal notice dated, 22.06.2005 issued to the defendant.

7. The defendant has since been proceeded *ex-parte* as such the averments in the plaint remain uncontroverted. The plaintiff has successfully established that she had indeed issued cheques in favour of the defendant for the said total sum of Rs. 14,00,000/- and that the same amount were appropriated by him (the defendant) and that a legal notice was issued in June, 2005 to the defendant demanding repayment of the said amounts. The facts mentioned by the plaintiff about purchase of the Narela Residential Scheme plot and the surrounding circumstances leading to her filing another suit against the defendant before the Civil Judge, do not, however concern the present suit; they are irrelevant.

8. In view of the above discussion, it is held that the plaintiff has established that she advanced the sum of Rs. 14,00,000/- (Rupees fourteen lakhs only) to the defendant. She has established that the defendant did not repay the amounts, despite her request; the evidence also shows that a legal notice was issued to the defendant, calling him to repay that amount, which was not complied with. The plaintiff, however, has not shown her entitlement to interest, as concededly the transaction was oral, and an informal arrangement. By all accounts, it was a

“friendly” loan, and in the absence of any terms regarding interest, the claim for interest @ 18% p.a. is not justified.

9. In view of the above discussion, the suit has to succeed to the extent of the principal amount. The suit is therefore, decreed for the sum of Rs. 14,00,000/- (Rupees fourteen lakhs only) with future interest @ 8 % per annum, till realization. The plaintiff shall be entitled to costs; the counsel’s fee is quantified at Rs. 35,000/-.

**S. RAVINDRA BHAT
(JUDGE)**

**NOVEMBER 3, 2009
‘ajk’**